

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JEREMY J FORTMANN
Claimant

APPEAL NO. 10A-UI-01723-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CULL-MAC OF IOWA INC
Employer

OC: 09/27/09
Claimant: Appellant (5)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 25, 2010, reference 01, that concluded the claimant voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on March 12, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Tricia Ploessl participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time for the employer as a crew member from October 22, 2008, to November 26, 2008. He was informed and understood that under the employer's work rules, employees were required to notify the employer three hours before the start of their shift if they were not able to work as scheduled. The claimant was warned on November 8, 2008, after he missed work without calling in.

The claimant was scheduled to work from 11 a.m. to 7:30 p.m. on November 29, 2009. He was absent from work because he was in jail charged with trespassing after an altercation with a family member. The claimant got out of jail on the afternoon on November 29 and called the owner to explain why he missed work. The owner informed the claimant that he had read in the newspaper about the claimant's arrest and the employer did not need him anymore.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a. The evidence establishes the employer discharged the claimant for being absent from work without notice and for being in jail. He did not quit.

The issue in this case then is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. He was absent from work without notice and without a legitimate excuse on November 29, and he had been warned about missing work without calling in before. Being in jail is not a legitimate reason for being absent. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated January 25, 2010, reference 01, is modified with no change in the outcome. The claimant was discharged for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs